

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE NEIMAN MARCUS GROUP, INC.;
BERGDORF GOODMAN, INC.;
AND NM NEVADA TRUST,

Plaintiffs,

vs.

DOTSTER, INC. A/K/A REVENUEDIRECT;
REGISTRARADS, INC.; AND SCOTT FISH,

Defendants.

NO. C06-5292RBL

**DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF DAVID J. STEELE

I, David J. Steele, declare as follows:

1. I am an attorney with the law firm of Christie, Parker & Hale, LLP, counsel of record for Plaintiffs The Neiman Marcus Group, Inc., Bergdorf Goodman, Inc. and NM Nevada Trust (collectively, "Plaintiffs"). The matters set forth below are of my personal knowledge and, if called as a witness, I would testify competently to each of the following facts.

2. In October 2006, I prepared a list of some of the domain names registered by Defendants which are identical or confusingly similar to the famous trade names, trademarks and

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1 service marks NEIMAN-MARCUS, NEIMAN MARCUS and BERGDORF GOODMAN
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 3 (collectively, "Plaintiffs' Famous Marks"). The list included the following 34 domain names:
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| 5 | 1. bergdorgoddman.com | 18. neimanns.com |
| 6 | 2. bergdorfgoodmon.com | 19. neimanscatalog.com |
| 7 | 3. bergdorfgoogman.com | 20. neimansjewelry.com |
| 8 | 4. bergerdorfgoodman.com | 21. neimenmarus.com |
| 9 | 5. bergmangoodman.com | 22. neimumarcus.com |
| 10 | 6. borgdorfgoodman.com | 23. nelmanmarcus.com |
| 11 | 7. emanmarcus.com | 24. nemammarcus.com |
| 12 | 8. marcusneimen.com | 25. nemimarcus.com |
| 13 | 9. neamannmarcus.com | 26. neminnmarcus.com |
| 14 | 10. nehmanmarcus.com | 27. nemninmarcus.com |
| 15 | 11. nehminmarcus.com | 28. neumanmarcos.com |
| 16 | 12. neimanmaracus.com | 29. neumenmarcus.com |
| 17 | 13. neimanmarcurs.com | 30. newmenmarcus.com |
| 18 | 14. neimanmarcuse.com | 31. nhminmarcus.com |
| 19 | 15. neimanmarcuslastchance.com | 32. niemanstores.com |
| 20 | 16. neimanmarisu.com | 33. ninemmarcus.com |
| 21 | 17. neimanmarqus.com | 34. niumanmarcus.com |
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27 3. I obtained the whois data for many of these domain names from the .com registry
 28 operator, and where available from the registrar, Dotster. For many of these confusingly similar
 29 domain names, Dotster fails to provide any whois data. For other confusingly similar domain
 30 names, Doster merely lists the registrant as "c/o the domain name" and does not list the name of
 31 the registrant. Whois data for many of these domain names (or, more accurately, the lack of
 32 whois data) is attached to Plaintiffs' First Amended and Supplemental Complaint as Exhibit 8,
 33 and is attached to this Declaration as Exhibit 1. The statement "No match for [domain name]"
 34 reflects the absence of any information regarding the name or address of the registrant of the
 35 domain name.
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37 4. In support of Plaintiffs' Original Complaint, I prepared a list of some of the
 38 domain names registered by Defendants which are identical or confusingly similar to other
 39 famous marks. Because of the large number of these domain names, I only included one famous
 40 mark for each letter of the alphabet (i.e., Abercrombie and Fitch, Bally's Total Fitness, Cingular
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1 Wireless, Disney, Expedia, etc.). This list of infringing domain names, which includes almost
2 one thousand names, is attached to Plaintiffs' Original Complaint as Exhibit 6, and is attached to
3 this Declaration as Exhibit 2.
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7 5. In support of Plaintiffs' Original Complaint, I viewed numerous websites
8 available at domain names registered by Defendants which are confusingly similar to Plaintiffs'
9 Famous Marks. Defendants hosted websites at most of these domain names which (1) displayed
10 links featuring goods or services directly competitive with those sold or provided by Plaintiffs, a
11 link that read "Offer to Buy This Domain," and (2) displayed pop-up advertisements. Clicking on
12 the link that read "Offer to Buy This Domain" created an email addressed to
13 domains@gmail.com. I prepared screen shots of each website and pop-up advertisement
14 displayed. These screen shots were attached to Plaintiffs' Original Complaint as Exhibit 9 and
15 Exhibit 10, and are attached to this Declaration as Exhibit 3 and Exhibit 4.
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19 6. In March 2006, two domain names owned by Defendants -- garacey.com and
20 bergmangoodman.com -- were purchased. The purchaser corresponded by email with the seller,
21 Defendant Scott Fish ("Fish"), an employee of Dotster. After receiving the initial email sent to
22 the domains@gmail.com address, Fish then used the email address domains@revenuedirect.com.
23 Copies of the correspondence regarding the purchase of garacey.com and bergmangoodman.com
24 are attached to this Declaration as Exhibit 5 and Exhibit 6, respectively.
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27 7. Fish instructed that payments for the sale of the domain names could be sent via
28 paypal or that a check could be made payable to "DOMAIN REGISTRATION" and sent to Fish
29 at 8100 NE Parkway Drive, Suite 300, Vancouver, Washington 98662, which is the same address
30 as Dotster. Although the check was made payable to DOMAIN REGISTRATION, the check was
31 stamped with Dotster's banking stamp, including Dotster's bank account number, and deposited
32 into Dotster's account. A copy of one payment check, with Dotster's account number redacted, is
33 attached to this Declaration as Exhibit 7.
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1 8. On January 21, 2006, I wrote an email to Defendants' legal counsel, Ravi Puri,
2 and informed him that Defendants' registration of neimanmarqus.com infringed The Neiman
3 Marcus Group, Inc.'s rights in the NEIMAN MARCUS mark. A copy of the January 21, 2006
4 email is attached to this Declaration as Exhibit 8.
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9 9. On January 22, 2006, Mr. Puri replied to my email and (a) acknowledged The
10 Neiman Marcus Group, Inc.'s trademark rights and (b) agreed to delete or transfer the
11 neimanmarqus.com domain name to Plaintiffs. A copy of the January 22, 2006 email is attached
12 to this Declaration as Exhibit 9.
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17 10. On January 23, 2006, Mr. Puri, in response to my questions, informed me by
18 email that Dotster was not the registrant of the neimanmarqus.com domain name and that Dotster
19 did not know the identity of the registrant. Mr. Puri's statement is inaccurate and misleading. A
20 copy of the January 23, 2006 email is attached to this Declaration as Exhibit 10.
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25 11. After receiving notice on January 22, 2006, of The Neiman Marcus Group, Inc.'s
26 trademark rights, Defendants continued registering or renewing domain names confusingly
27 similar to those famous marks, including neamannmarcus.com; neimanmaracus.com;
28 neimanmarcuse.com; neimanmarcuslastchance.com; neimanmarisu.com; neimanns.com;
29 neimansjewelry.com; nemammarcus.com; nemninmarcus.com; neumanmarcos.com;
30 neumenmarcos.com; newmenmarcus.com; ninemmarcus.com; and emanmarcus.com.
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35 12. After being served with Plaintiffs' Original Complaint on June 1, 2006,
36 Defendants continued registering domain names which are confusingly similar to Plaintiffs'
37 Famous Marks. For example, on October 13, 2006, Defendants registered neimanscatalog.com
38 and niemanstores.com.
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43 13. After being served with Plaintiffs' Original Complaint on June 1, 2006,
44 Defendants also continued registering domain names which are confusingly similar to the
45 famous marks listed in Exhibit 6 of Plaintiffs' Complaint (i.e., Abercrombie and Fitch, Bally's
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1 Total Fitness, Cingular Wireless Disney, Expedia, etc.). The following is a list of domain names
 2 registered or renewed by Defendants, after receiving service of Plaintiffs' Original Complaint:
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 6 aberconbiandfictth.com
 7 abercrumbieandfinch.com
 8 ballyhealthspa.com
 9 ballynutrient.com
 10 disneyblockoutdates.com
 11 disneycampground.com
 12 disneychammle.com
 13 disneychanelchanel.com
 14 disneychanelsohotsummer.com
 15 disneychanelauditions.com
 16 disneychanelfathersday.com
 17 disneychanelhotsummer.com
 18 disneychannelnnel.com
 19 disneychannelsohotsummer.com
 20 disneychannel-sohotsummer.com
 21 disneychannelssohotsummer.com
 22 disneyfireworks.com
 23 disneylandcaliforniaadventures.com
 24 disneylandcruises.com
 25 disneylandland.com
 26 disneyporncollection.com
 27 disneyprencess.com
 28 disneysgrandcaliforniahotel.com
 29 disneysohotsummer.com
 30 disneyworldcampgrounds.com
 31 expedee.com
 32 expediance.com
 33 google-satellite.com
 34 googlesexoffender.com
 35 googletrace.com
 36 jcp-photo.com
 37 marriop.com
 38 marriotcourtyard.com
 39 neimanscatalog.com
 40 niemanstores.com
 41 playboymanshen.com
 42 randmcannly.com
 43 searsessential.com
 44 searsphot.com
 45 searsphotgraphy.com
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1 searspicturestudio.com
2 searsscratchanddent.com
3 toyotaofnorthampton.com
4 toyotarentals.com
5 toyotasoutheast.com
6 unitediar.com
7 walmartdistributioncenters.com
8 walmartexpress.com
9 xmdelphi.com
10 xmsatliteradio.com
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15 Copies of the registry whois data for each domain name is attached to this Declaration as Exhibit
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17 11. Registry whois data for .com domain names does not contain the contact data typically
18 provided by the registrar.
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21 14. As of October and November 2006, Defendants failed to provide any whois data
22 for many of the domain names they registered. Copies of the registry and registrar whois data for
23 some of the domain names which Defendants failed to provide any whois data for are attached to
24 this Declaration as Exhibit 12.
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29 15. For many of the domain names Defendants registered, Dotster merely lists the
30 registrant as "c/o the domain name" and does not list the actual name of the registrant. A copy of
31 the registry and registrar whois data for ballyhealthspa.com, one such example, is attached to this
32 Declaration as Exhibit 13.
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37 16. I was advised by counsel for Defendants Dotster and Scott Fish, Vincent V.
38 Carissimi, that "RegistrarAds, Inc." was the affiliate for whom Dotster registered the domain
39 names listed in the Complaint.
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43 17. On December 8, 2006, I printed sections 3.3.1.6 and 3.3.1.7 from the *Registrar*
44 *Accreditation Agreement*, which was available at [http://www.icann.org/registrars/ra-agreement-](http://www.icann.org/registrars/ra-agreement-17may01.htm)
45 [17may01.htm](http://www.icann.org/registrars/ra-agreement-17may01.htm). Copies of both sections are attached to this Declaration as Exhibit 14.
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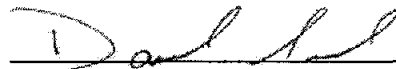
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DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION- 5

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.
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7 Executed on December 8, 2006.
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David J. Steele

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DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION- 6

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CERTIFICATE OF SERVICE

On December 12, 2006, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following documents:

**DECLARATION OF DAVID J. STEELE IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

| | | |
|---------------------------------------|----------|---|
| Jamie C. Clausen | — | Via hand delivery |
| COZEN O'CONNOR | — | Via U.S. Mail, 1st Class, Postage Prepaid |
| 1201 Third Avenue, Suite 5200 | — | Via Overnight Delivery |
| Seattle, Washington 98101 | — | Via Facsimile |
| Attorneys for Defendants | <u>X</u> | Via E-filing |
| Robert W. Hayes | — | Via hand delivery |
| COZEN O'CONNOR | — | Via U.S. Mail, 1st Class, Postage Prepaid |
| 1900 Market Street | — | Via Overnight Delivery |
| Philadelphia, Pennsylvania 19103 | — | Via Facsimile |
| Attorneys for Defendants | <u>X</u> | Via E-filing |
| Vincent V. Carissimi | — | Via hand delivery |
| Michael J. Leonard | — | Via U.S. Mail, 1st Class, Postage Prepaid |
| PEPPER HAMILTON LLP | — | Via Overnight Delivery |
| 3000 Two Logan Square | — | Via Facsimile |
| Eighteenth and Arch Streets | <u>X</u> | Via E-filing |
| Philadelphia, Pennsylvania 19103-2799 | | |
| Attorneys for Defendants | | |

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED at Portland, Oregon, this 12th day of December, 2006.

s/ Sarah J. Crooks, WSBA No. 97151

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